IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9562 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYANTIBHAI JADAV

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 9562 of 2002

MR SUNIL C PATEL for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/04/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the

legality and validity of the order of detention dated 05.09.2002 passed against the detenu by the the Police Commissioner, City of Vadodara, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

2. The petitioner is father of the detenu Devendra Jignesh @ Jigo Jayantibhai Jadav and it is contended that the detenu has been wrongly branded as a bootlegger and a person involved in the activity of bootlegging which can prejudicially affect the maintenance of public order. For passing the detention order against the detenu, the Police Commissioner, City of Vadodara, has recorded subjective satisfaction on the strength of the papers submitted by the sponsoring machinery and the Commissioner has considered three aspects, namely, the registration of a criminal offence with Gorwa Police Station vide C.R.No.253 of 2003 for the offence punishable under Bombay Prohibition Act on 3rd August 2002 at about 12.35 pm. In the alleged incident three persons were found responsible and Indian Made Foreign Liquor worth Rs.49,800 was seized in 145 bottles. The learned AGP, Ms Nandini Joshi in response to the query raised by the Court has submitted that other two persons were gainfully employed by this person and the detenu is the leader in these illegal activities. The detaining authority has also placed reliance on two different statements of two unknown persons whereby both these witnesses have narrated incidents occurred on 11.8.2002 and 15.8.2002. I have carefully considered the grounds for detention communicated to the detenu and the logic emerging from the grounds for detention. It is rightly argued by Mr Shukla that in reality this case should be treated as a case of solitary incident and harsh action of passing of an order of detention under PASA ought to have been taken by the detaining authority. Even if it is accepted that two other wrongs were committed by the present petitioner on 11th and 15th August 2002, even then the alleged wrongs can be said to be some disturbance in law and order qua these two individuals. The learned AGP, Ms Nandini Joshi has submitted that this is not a case of solitary incident at all and the activity of the detenu should be viewed in the light of the definition of a bootlegger as defined under the PASA and the authority is entitled to detain a person involved in the bootlegging activity even when formal registration of any criminal offence against him. It is a matter of subjective satisfaction of the authority on the papers placed before him. Even if it is considered to be a case of solitary incident, then also the ratio of the decision

of the Apex Court in the case of MRS. HARPREET KAUR HARVINDER SINGH BEDI Vs. STATE OF MAHARASHTRA & ANR. [AIR 1992 SC 979] would go against the present petitioner and accepting this ratio the order of detention should not be quashed. On corroboration of the facts of the case cited the Court is of the view that the incident brought before the Apex Court was much more severe and grave. It was a challenge practically to the society and the machinery engaged in the maintenance of law and order. On reading of the facts it transpires that four persons had shown their willingness to be the witnesses in the incident in question but they were threatened by the detenu. The creation of fear psychosis by the act of the detenu while transporting the illicit liquor by keeping arms with him and he had tried to run over by his speeding vehicle the police party which tried to intercept him and stop him. So on the given set of facts the Apex Court held that the activities of the detenu were not merely prejudicial to the maintenance of law and order but prejudicial to the maintenance of public order. It is true that for a solitary incident also the person can be detained but prior and subsequent conduct vis-a-vis gravity of the wrong committed qua the society is to be looked into. Even if it is believed to be true that the facts emerging from the papers placed before the detaining authority as regards truthfulness of the three incidents as correct narration of each incident, even then this case would fall in a category which can be said to be a case of prejudicial to the maintenance of law and order and not of public order.

3 The other point argued by Mr Shukla is that the privilege exercised by the detaining authority under sub-section (2) of Section 9 of the PASA is also neither legal nor justified. Without going into the merits of the next point submitted by Mr Shukla the order of detention can be quashed only on the ground that there was no reason or scope for the detaining authority to pass the order of detention as the present case does not fall in the category of case which can be said to be disturbing the public order.

4. For the reasons aforesaid, this petition is allowed. The impugned order of detention dated 5.9.2002 passed against the detenu by the Police Commissioner, Vadodara City, is hereby quashed and set aside and the detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

(C.K. Buch, J.)

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